

## Chapter 1449. Zoning Appeals.

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### § 1449-01. Purpose and Authority.

The purpose of this chapter is to establish the process for hearing and deciding on appeals of decisions made under this code.

(a) ***Appeals to Council.*** Council has the duty to hear appeals:

- (1) From decisions of the Historic Conservation Board pertaining to the grant or denial of a Certificate of Appropriateness.
- (2) Arising out of the use of property owned or operated by the State of Ohio, Hamilton County, the City of Cincinnati, the Board of Education of the City School District of the City of Cincinnati, the University of Cincinnati, or any agency of the state or its political subdivisions.
- (3) Arising out of the grant or denial of any permit for the use of property as a correctional facility or as a community correctional facility.

Appeals to Council are conducted as provided by Section 111-3 of the Cincinnati Municipal Code.

(b) ***Appeals to the Zoning Board of Appeals.*** The Zoning Board of Appeals has the duty to hear all appeals arising out of the Cincinnati Zoning Code unless otherwise provided.

### § 1449-03. Person Affected.

As used in this chapter “person affected” means:

- (a) Any applicant for a permit or owner of property that is the subject of a final decision or order of the Director of Building and Inspections, the Director

of Community Development and Planning, the Historic Conservation Board or the Zoning Hearing Examiner.

- (b) Any owner or occupant of property abutting subject property,
- (c) Any other person who is substantially and adversely affected by a final decision of the Historic Conservation Board or the Zoning Hearing Examiner made following a public hearing, who expressed in writing a position prior to the hearing or testified at the hearing.
- (d) A community organization recognized by Council as representing the area that includes the subject property and that has prepared a community plan accepted by Council has standing to appeal without regard to having expressed an opinion in writing prior to the hearing or having testified through a representative at the hearing.

#### **§ 1449-05. Rules and Regulations.**

The Zoning Board of Appeals may adopt from time to time rules of procedure as the Board deems necessary to carry out the performance of its functions.

#### **§ 1449-07. Public Hearing Notice and Procedures.**

The Secretary of the Zoning Board of Appeals has the duty to give notice of hearings before the Board by publication one time in the "City Bulletin" not less than six days in advance of the hearing. At least three members of the Zoning Board of Appeals must be present at the hearing. At any public hearing of the case before the board, the person affected may be represented by counsel or agent. The appellant's side of the case is heard first and those in objection follow. Every person who appears before the Board has the duty to abide by the order and direction of the officer presiding over the hearing. The presiding officer may exclude from the hearing any person whose conduct is discourteous or contemptuous.

#### **§ 1449-09. Appeals to the Zoning Board of Appeals.**

The following persons may appeal to the Zoning Board of Appeals:

- (a) ***Persons affected by a final decision of the Director of Buildings and Inspections or the Zoning Hearing Examiner.*** Any person affected, as defined in § 1449-03, by a final decision of the Director of Buildings and Inspections or the Zoning Hearing Examiner has standing to appeal to the Zoning Board of Appeals.
- (b) ***Persons affected by certain decisions of the Historic Conservation Board.*** A person affected by a decision of the Historic Conservation Board pertaining to an Urban Design Overlay District, Planned Development, conditional use, variance, special exception or Downtown Development

District may appeal that decision to the Zoning Board of Appeals. Appeals are conducted in the same manner as appeals from decisions of the Director of Building and Inspections.

#### **§ 1449-11. Time Limit for Appeals.**

Notice of appeal must be filed with the Secretary of the Zoning Board of Appeals within 30 days of the date of mailing of the decision below by the decision-making body or official. The secretary has the duty to promptly notify the maker of the decision being appealed and the owner of the subject property or permit applicant, if other than the appellant, of the filing of the notice of appeal. In cases where the appeal is to be heard by Council, the notice of appeal must be filed with the Clerk of Council.

#### **§ 1449-13. Procedures for Appeals from Decisions of the Director of Buildings and Inspections.**

The following procedures apply to appeals to the Zoning Board of Appeals from decisions of the Director of Buildings and Inspections:

- (a) **Application.** The application procedure for appeals is as follows:
  - (1) A person with standing as specified in § 1449-09, Appeals to the Zoning Board of Appeals, must file a notice of appeal on forms prepared and supplied by the Secretary of the Board.
  - (2) All appeals must be accompanied by materials specified on the application form.
- (b) **Remand.** The board may remand a matter to the director in order to cure a deficiency in the record or the proceedings below.
- (c) **Hearing.** At the hearing the appellant and any affected person have the right to:
  - (1) Present their positions, arguments and contentions.
  - (2) Offer and examine witnesses and present evidence in support of positions, arguments and contentions.
  - (3) Cross-examine witnesses purporting to refute their position, arguments and contentions. The board may limit the right of cross-examination to persons represented by counsel.
  - (4) Offer evidence to refute evidence and testimony offered in opposition to their position, arguments and contentions.
- (d) **Decision.** The board has the duty to enter a decision in accordance with § 1449-17, Decision.

## **§ 1449-15. Procedures for Appeals from Decisions of the Zoning Hearing Examiner.**

The following procedures apply to appeals to the Zoning Board of Appeals from decisions of the Zoning Hearing Examiner:

- (a) **Application.** The application procedure for appeals is as follows:
  - (1) A person with standing as specified in § 1449-09, Appeals to the Zoning Board of Appeals, must file a notice of appeal on forms prepared and supplied by the Secretary of the Board.
  - (2) All appeals must be accompanied by materials specified on the application form.
- (b) **Transcript.** Within 21 days of the filing of the notice of appeal, the appellant has the duty to cause a complete record of the proceedings, including a transcript of all testimony, pertaining to the decision being appealed to be filed with the secretary of the board at the appellant's cost.
- (c) **Remand.** The board may remand a matter to the examiner in order to cure a deficiency in the record or the proceedings below.
- (d) **Hearing.** The appellant and any person who expressed a position in writing or testified in opposition below have an opportunity personally or through counsel to present arguments based on the evidence in the record. No other person has a right to be heard. The board is confined to consideration of the record and arguments based on the record as filed unless it appears on the face of the record or by affidavit filed by person affected that:
  - (1) The record does not contain a report of all evidence admitted or proffered below.
  - (2) The testimony adduced was not given under oath.
  - (3) The appellant or other person affected was not permitted to be heard in person or by counsel in opposition to the order appealed:
    - (A) To present the position, arguments and contentions of the appellant or other person affected.
    - (B) To offer and examine witnesses and present evidence in support thereof.
    - (C) To cross-examine witnesses purporting to refute the position, arguments and contentions of the appellant or other person affected.

- (D) To offer evidence to refute evidence and testimony offered in opposition to the position arguments and contentions of the appellant or other person affected.
- (E) To proffer any such evidence into the record, if the admission thereof was denied by the examiner.

The board may remand a matter to the examiner in order to cure any such deficiency or enter such other order as justice may require. Otherwise, the board may not receive any additional testimony or evidence.

- (e) **Decision.** The board has the duty to enter a decision in accordance with § 1449-17, Decision.

### **§ 1449-17. Decision.**

The Zoning Board of Appeals may find that the order, adjudication, or decision is illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the board may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the Board.

A majority of the members of the board present and voting is required to reverse, vacate or modify the order, adjudication or decision. In the absence of a majority or in the case of a tie vote, the order, adjudication or decision is deemed affirmed.

The board may direct the appellant or other person who appeared at the hearing to propose findings of fact and conclusions of law supporting its decision. The chairman of the board has the duty to cause findings and conclusions to be entered on the record. A decision by the board is effective as of the date of mailing of the findings and conclusions. The secretary has the duty to send written notification of the decision to the appellant.

### **§ 1449-19. Appeal.**

Appeals to the Hamilton County Court of Common Pleas may be taken as allowed by Ohio Revised Code Chapter 2506, Appeals from Orders of Administrative Officers and Agencies, or other law.